

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

007412.00289

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on _____

Signature _____

Typed or printed name _____

Application Number

09/447,472

Filed

November 23, 1999

First Named Inventor

James B. Armstrong, et al.

Art Unit

2421

Examiner

Sumaiya Chowdhury

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Mark E. Wilinski/

Signature

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Mark E. Wilinski

Typed or printed name

☒ attorney or agent of record.
Registration number 63,230

202-824-3000

Telephone number

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

October 17, 2011

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☒ *Total of 3 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

James B. Armstrong, et al.

Serial No.: 09/447,472

Filed: November 23, 1999

For: METHOD AND APPARATUS FOR
HIERARCHICAL DISTRIBUTION OF
VIDEO CONTENT FOR AN
INTERACTIVE INFORMATION
DISTRIBUTION SYSTEM

Atty. Docket No.: 007412.00289

Group Art Unit: 2421

Examiner: Chowdhury, Sumaiya

Confirmation No.: 3863

PRE-APPEAL BRIEF REQUEST FOR REVIEW

U.S. Patent and Trademark Office, Mail Stop *AF*
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants respectfully request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the below remarks. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit Deposit Account No. 19-0733, accordingly. Any necessary extensions of time are hereby requested.

Remarks

Having received and reviewed the Final Office Action dated July 6, 2011, in view of the Advisory Action dated September 26, 2011, Applicants respectfully submit that the standing rejections are based on one or more clear legal and factual errors, and that the appeal process can be

avoided through a pre-appeal brief review as set forth in the Official Gazette notice of July 12, 2005.

Rejections Under 35 U.S.C. § 103

Claims 1-4, 6-8, 19, 21-25, and 27-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hokanson (US 5, 999,351) in view of Goldszmidt (US 6,195,680).

Independent claim 1 recites, among other features:

wherein the manager, in response to an infrequently requested video asset becoming frequently requested, is configured to select and transmit the frequently requested video asset to at least one primary partition of each of at least two servers;

wherein the manager, in response to a frequently requested video asset becoming infrequently requested, is configured to select and transmit the infrequently requested video asset to at least one secondary partition of at least one, but less than the all of, the plurality of servers and removing the infrequently requested video assets from the primary partitions.

Regarding the substance of the applied documents, claim 1 recites transmitting infrequently requested content to at least one, “**but less than all,**” of the servers, and the cited Goldszmidt document only shows transmitting the content to all of its servers. Goldszmidt (at col. 4, lines 26-54; col. 5, lines 33-45; col. 7, lines 10-22; col. 8, lines 27-33) “discloses load balancing in order to provide a good balance of server availability. The control server redirects user requests to servers that can provide the multimedia requested. In the event that there is a server failure or content overload, the control server redirects the client to the secondary server which also provides the same multimedia.” Office Action at pages 3-4. To accomplish this, the Goldszmidt system clearly would have the same content on both the failed server and the backup server. There is no mention of any single server in Goldszmidt that would **not** have the content.

Claim 1 is distinguishable from the applied art for at least the foregoing reasons (notwithstanding whether a combination of the applied documents would have been proper).

Independent claims 19 and 25 recite features similar to those described above with respect to claim 1 and are distinguishable from the applied art for at least substantially similar reasons.

Further, Applicants submit that the record regarding the rejection of dependent claim 21 is not clear enough to survive appeal. To illustrate, claim 21 recites “for each infrequently requested video asset that becomes a frequently requested video asset, removing the infrequently requested video asset from the secondary storage partition.” The Office Action at page 7 contends that such features are recited in claim 1 which is rejected under Hokanson in view of Goldszmidt. Claim 1 does **not** recite “for each infrequently requested video asset that becomes a frequently requested video asset, removing the infrequently requested video asset from the secondary storage partition,” as is recited in claim 21. As such, the Office has failed to establish a *prima facie* case of obviousness with respect to claim 21. MPEP 2142 (providing that the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness, and that if the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness). In the event that the Office maintains a rejection of claim 21 based on Hokanson and/or Goldszmidt, Applicants request the Office to explain how the applied art allegedly describes the above-noted features recited in claim 21 in order to provide a clear record for the appeal.

Furthermore, claim 4, which ultimately depends from claim 1, recites that “the server is a local server” and “the apparatus further compris[es] . . . a content session manager configured to respond to video asset requests forwarded from managers of other servers.” The Office Action at page 5 contends that Hokanson at col. 7, lines 25-42 describes a content session manager that is configured to respond to video asset requests forwarded from managers of other servers. Hokanson at col. 7, lines 25-42 describes a Seattle-based network cite that contains a blend of resources that are tailored to users in the Seattle metropolitan area, and that the Seattle-based network cite accesses a Hollywood-based network cite to obtain a hot new movie released by a Hollywood studio. Even assuming that the Seattle-based network cite providing resources tailored to Seattle users could have been analogized to a local server as recited in claim 4, Hokanson at col. 7, lines 25-42 fails to describe that the Seattle-based network cite is configured to respond to video asset requests forwarded from managers of other servers (e.g., the

Hollywood-based network cite). Accordingly, claim 4 is distinguishable from the applied art for at least these additional reasons.¹

Applicants submit that the application is in condition for allowance. Applicants reserve the right to include additional argument in an appeal brief.

¹ As an additional point, the rejection of claim 4 refers to a “headend” that is not recited in that claim. For a clear record on appeal, Applicants submit that correction and clarification of the discussion on this point would be helpful.